

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 965 of 1986

with

SPECIAL CRIMINAL APPLICATION No. 1229 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KASHUBEN AMRITPURI GOSWAMI

Versus

AMRITPURI RATANPURI GOSWAMI

Appearance:

1. Special Criminal Application No. 965 of 1986
MR KS JHAVERI for Petitioner
MS KUSUM M SHAH for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 2
2. Special Criminal Application No. 1229 of 1986
MS KUSUM M SHAH for Petitioner
MR KS JHAVERI for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/08/98

COMMON JUDGEMENT

Heard learned advocates Mr. M.R Vyas for the petitioner in Special Criminal Application No. 965 of 1986 and respondents in Special Criminal Application No. 1229 of 1986 and learned advocate Ms. K.M Shah for the petitioner in Special Criminal Application No. 1229 of 1986 and the respondent No. 1 in Special Criminal Application No. 965 of 1986. Both these petitions challenge the common judgment and order dated 31st July, 1986 passed by the learned Sessions Judge, Banaskantha in Criminal Revision Applications Nos. 3 of 1986 and 22 of 1986. Both these petitions are disposed of by this common judgment and order with the consent of the learned advocates.

2. The short facts leading to the present petitions are : The petitioner in Special Criminal Application No. 965 of 1986 was married to the petitioner in Special Criminal Application No. 1229 of 1986 sometime in the year 1973. A son was also born to them, however, the relations between both the petitioners were strained and the petitioner in Spl. Criminal Application No. 965 of 1986 {hereinafter referred to as "the Claimant"} had to leave her matrimonial home alongwith her minor son and to reside with her parents. She, therefore, filed Criminal Misc. Application No. 58 of 1983 before the learned Judicial Magistrate, First Class, Palanpur for maintenance under Section 125 CrPC against the petitioner in Spl. Criminal Application No.1229 of 1986 {hereinafter referred to as "Amritpuri"}. She contended that Amritpuri had been harassing and torturing her and had also married to one Champaben and a son was born to said Champaben. She was, therefore compelled to reside with her parents alongwith her minor son; that Amritpuri owned valuable agricultural lands, cattle and a residential house. He also owned a tractor and earned some income from the said tractor. That Amritpuri was a rich man and was capable of maintaining the claimant and her minor son. She, therefore, claimed that the claimant and the minor son each should be awarded monthly maintenance of Rs. 500/-. The claim was contested by Amritpuri. He contended that claimant had left her matrimonial home on her own volition and she was not compelled to leave her matrimonial home. He denied the factum of his marriage to Champaben. He also denied that he owned valuable agricultural lands, as alleged, or that he earned any income by maintaining cattle and the tractor. He also contended that he had substantial

family liability. That he had to maintain his parents, brothers and sisters, etc.

Learned Magistrate after recording the evidence found that the claimant was compelled to leave her matrimonial home. That Amritpuri had married Champaben and a son has been born to said Champaben. That Amritpuri owned 3 pieces of agricultural land admeasuring 19 Acres and 14 gunthas. That, on two pieces of land, he raised three crops every year and on the third piece of land, he raised one crop during the monsoon. That he had four Buffaloes and had also purchased a tractor by borrowing loan of Rs. 55,000/- and out of which some amount was repaid and Rs. 40,000/- was still outstanding. Considering the nature of crops raised by Amritpuri, the learned Magistrate inferred that he was earning Rs. 20,000/- from his agricultural lands and that he must be earning some income by selling milk of Buffaloes and by using tractor. The case of Amritpuri that he had only 8 Acres of infertile agricultural land was disproved and that his tractor was out of order also was not believed. Considering the extent of the income earned by Amritpuri, the learned Magistrate under his Order dated 21st December, 1985 awarded monthly maintenance of Rs. 400/- and Rs. 200/- to the claimant and the minor son respectively.

Feeling aggrieved, Amritpuri preferred Criminal Revision Application No. 3 of 1986 and the claimant preferred Criminal Revision Application No. 22 of 1986 before the learned Sessions Judge, Banaskantha. The learned Sessions Judge under his judgment and order dated 31st July, 1986 dismissed Criminal Revision Application No. 22 of 1986 preferred by the claimant and partly allowed the Criminal Revision Application No. 3 of 1986 preferred by Amritpuri. The learned Sessions Judge having reappreciated the evidence held that the inference drawn by the learned Magistrate was erroneous. The learned Sessions Judge on the evidence produced on the record, confirmed the finding of the learned Magistrate that the claimant had valid reason to leave her matrimonial home and to reside with her parents. He, therefore, held that the claimant and her minor son were entitled to maintenance from Amritpuri. The learned Sessions Judge, however, inferred that the agricultural income of Amritpuri could not be more than Rs. 14,000/=-, out of which he was required to repay the loan borrowed by him and after making the repayment, his net income would be Rs. 4000/-. He, therefore, reduced the amount of maintenance ordered to be paid to the claimant and the minor son to Rs. 250/- and Rs. 150/- respectively.

Feeling aggrieved, both the claimant and Amritpuri have preferred the above writ petitions.

Mr. Vyas has contented that the learned Sessions Judge has erred in inferring that no income was earned by Amritpuri by sale of milk of buffaloes maintained by him or by using the tractor. The learned Sessions Judge has also erred in holding that the agricultural income of Amritpuri could not be more than Rs. 14000/-. He has submitted that the income earned by Amritpuri is a fact within the personal knowledge of Amritpuri and the onus to prove the same lay on Amritpuri. On the evidence available on record, the claim of Amritpuri has been disproved and the learned Magistrate was, therefore, right in drawing inference in respect of the income earned by Amritpuri. The same being finding of fact, the learned Sessions Judge, exercising its revisional jurisdiction under Section 397 CrPC, ought not to have interfered with the same. He has further submitted that considering the property owned by Amritpuri, the claimant and the minor son each ought to have been awarded maintenance of Rs. 500/- per month and the same, therefore, should be enhanced to Rs. 500/- per month.

Ms. Shah has contended that both the Courts below have erred in holding that the claimant had a valid reason to leave her matrimonial home and to reside with her parents. She has asserted that she had left her matrimonial home of her own volition and was not willing to return back to Amritpuri even though Amritpuri was ready and willing to accept her. She has, therefore, submitted that the claimant was not entitled to maintenance from Amritpuri. In the alternative, she has submitted that even if it is held that the claimant was entitled to maintenance from Amritpuri, the maintenance awarded by the learned Magistrate was excessive and has rightly been reduced by the learned Sessions Judge, the same therefore, should not be interfered with.

In view of the concurrent finding recorded by both the Courts below to the effect that the claimant had a valid reason to leave her matrimonial home and to reside with her parents, the contentions raised by Ms. Shah cannot be accepted. It must, therefore, be held that the claimant and her minor son were entitled to maintenance from Amritpuri. It is proved by the evidence produced on the record of the matter that Amritpuri owns more than 19 acre of agricultural lands, that on

substantial part of the said lands, he raises three crops annually and on the third piece of land also he raises monsoon crop. Amritpuri did not adduce any evidence to show the actual income earned by him by sell of milk of Buffalo and by the use of tractor. In my view, the learned Magistrate was right in inferring that he must be earning some income by selling the milk and by use of the tractor. Even after repayment of the instalments of loan money, he must be earning some income by use of the tractor. The learned Sessions Judge, exercising revisional jurisdiction under section 397 Cr.P.C. ought not to have interfered with the said findings. Further, in absence of any evidence produced by Amritpuri in respect of his income from sale of milk, the inference ought to be drawn against him. Similarly, it cannot be believed that Amritpuri having borrowed loan of Rs. 55,000/- and having bought a tractor would permit it to lie idle and not use it for any purpose. Thus, considering the extent of the property owned by Amritpuri, the maintenance awarded to the claimant and the minor son ought not to have been interfered with by the learned Sessions Judge. As far as claimant's claim for further enhancement of the maintenance is concerned, the same also deserves to be rejected. Keeping in view the income believed to be earned by Amritpuri, the learned Magistrate has rightly awarded maintenance of Rs. 400/- and Rs. 200/- to the claimant and the minor son respectively, and the same does not require to be enhanced further.

In view of the above discussion, Special Criminal Application No. 965 of 1986 is allowed. The judgment and order dated 31st July, 1986 of the learned Sessions Judge, Banaskantha in so far as it reduces the amount of maintenance awarded to the claimant and the minor son is quashed and set-aside. The judgment and order dated 21st December, 1985 passed by the learned Judicial Magistrate, First Class, Palanpur in Criminal Misc. Application No. 58 of 1983 is restored. Rule is made absolute to that extent. Special Criminal Application No. 1229 of 1986 is dismissed. Rule is discharged. Parties shall bear their own costs. Amritpuri shall pay the arrears/difference of maintenance payable to the claimant and the minor son within a period of six months from today.

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Prakash*

